IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.222 of 1998 along with RFA No.220/98 with Cross Objection No.62/99, RFA No.223/98 with C.O. No.57/99, RFA No.224/98 with C.O. No.58/99, RFA No.225/98 with C.O. No.60/99, RFA No.226/98 with C.O. No.32/99, RFA No.227/98 with C.O. No.59/99, RFA No.228/98 with C.O. No.127/99, RFA No.231/98 with C.O. No.31/99, RFA No.232/98 with C,O. No.61/99 and RFA No.45 of 2000.

Reserved on: July 05, 2007.

Decided on: July 18, 2007

***For title please see overleaf*:**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants:	**Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl. A.G. for the appellants & for respondents in RFA No.45 of 2000.**
For the Respondents:	**Mr.K.D.Sood and Mr.Vinod Gupta, Advocates (Mr.Vinod Gupta, Advocate for the appellants in RFA No.45 of 2000).**

Kuldip Singh, Judge

This judgment shall dispose of RFA No.222 of 1998 with RFAs No.220, 223, 224, 225, 226, 227, 228, 231, 232 of 1998 & RFA No.45 of 2000 which have arisen from land reference petitions No.34-N/4 of 1991, 37-N/4 of 1991, 43-N/4 of 1991, 39-N/4 of 1991, 44-N/4 of 1991, 41-N/4 of 1991, 38-N/4 of 1991, 40-N/4 of 1991, 36-N/4 of

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[1] **Whether the reporters of the local papers may be allowed to see the Judgment*? Yes***

1991, 33-N/4 of 1991 and 32-N/4 of 1991 respectively along with cross objections No.62/99 in RFA No.220/98, C.O. No.57/99 in RFA No.223/98, C.O. No.58/99 in RFA No.224/98, C.O. No.60/99 in RFA No.225/98, C.O. No.32/99 in RFA No.226/98, C.O. No.59/99 in RFA No.227/98, C.O. No.127/99 in RFA No.228/98, C.O. No.31/99 in RFA No.231/98 and C.O. No.61/99 in RFA No.232/98. All these appeals have arisen out of common award dated 31.3.1998 passed by learned Additional District Judge, Sirmaur District at Nahan. The parties are referred in the same manner as in impugned award.

2. The brief facts are that State of Himachal Pradesh for construction of *Shargaon – Ranaghat – Habban Road* on the directions of High Court in CWP No.642 of 1985 and CWP No.146 of 1988 for acquiring the land issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') which was published in the Gazette on 27.5.1989. The Collector made the award on 30.3.1991. The Collector classified the land as (i) *Kuhal Salana (ii) Obar Khadi (iii) Banjar Kadeem and (iv) Na kabil.* Accordingly, he fixed the market value of the land at the rate of Rs.6,650/- for *Kuhal Salana,* Rs.3500/- for *obar khadi* and Rs.500/- for *Banjar Kadeem, Ghasni and Gair Mumkin.* There were 156 fruit trees and one non fruit tree which were assessed by the Horticulture Department and the Forest Department. The Collector assessed an amount of Rs.1,32,098/- on account of market value of land and fruit bearing trees besides additional amount equivalent to 30% in lieu of

compulsory acquisition charges, 12% interest and 12% additional compensation on market value. Thus, a total sum of Rs.2,53,525.57 was assessed as market value by the Collector, an amount of Rs.30,612/- was already paid to petitioners as interim compensation and, therefore, this amount was deducted.

3. The petitioners filed objections against the award of the Collector by way of reference petitions under Section 18 of the Act. According to them, market value of the land was Rs.13 lacs per Bigha in the area. The market value has been assessed on the lower side. No compensation has been paid for the fruit trees. The reference petitioners claimed Rs.50,000/- on this count. The road has divided their holdings, therefore, compensation of Rs.50,000/- has been claimed for this purpose. They claimed interest including solatium since 1970 when the road was constructed. They also made the grievance that due to the construction of road their adjoining lands have been badly damaged.

4. The State contested the reference petitions and has taken almost common stand in all the petitions. It has been alleged that full compensation has been awarded to the petitioners and there are no grounds for enhancement of compensation. According to them, Jabbar Singh, whose land is situated in the same village and was acquired for the same purpose, was working as Patwari in the office of respondent No.1. He was knowing as to when the notification was going to be issued under Section 4 of the Act, as

such, he in connivance with interested persons got executed fictitious sale deeds with a view to artificially enhance the sale price of the land in the village. Therefore, the market value has been assessed on the basis of sale price of the adjoining village Ranaghat. The learned Additional District Judge announced the award on 19.5.1994 and the reference petitions were answered in favour of petitioners after giving them additional amount on account of solatium and interest under Sections 28, 34 of the Act. The respondents filed appeals against the award of learned Additional District Judge which were registered as RFA No.83 of 1994 to RFA No.99 of 1994. The appeals were allowed by order dated 7.8.1997 and the cases were remanded to learned Additional District Judge. After remand, the learned Additional District Judge has decided the reference petitions by common impugned award dated 31.3.1998. The learned Additional District Judge awarded Rs.11,000/- per Bigha for all categories of land without fruit bearing trees and for land with fruit bearing trees he awarded Rs.16,000/- per Bigha. He has also awarded statutory amounts. He has awarded interest, except on solatium, at the rate of 9% per annum for the first year and at the rate of 15% for the remaining period from the date of taking over possession i.e. January 1972 till payment or deposit of the enhanced compensation. This has been assailed in the above appeals. The claimants / petitioners have filed cross objections referred above and submitted for enhancement of compensation.

5. The following is the description of land etc. in each reference petition as per the impugned award:-

Sr. No.	***Land Reference No.***	***Name of parties***	***Description of land with measurement***
1.	32-N/4 of 1991	1. Smt.Thagro 2. Sh.Matha 3. Smt.Pinjro 4. Karai 5. Baraso and 6. Sarjoo R/o Vill. Tikkari.	Kh/Kh.No.29/47 min, Kh. No.186/2 measuring 0-2, Kh/Kh No.12/15 min, Kh. No.120/2, 123/2, measuring 2-9, Kh/Kh No.13/16 min, Kh. No.195/29/1 measuring 0-1.
2.	33-N/4 of 1991	Khyalu s/o Shri Gulaboo R/o Vill. Tikkari.	Khata/Khatauni No.12/15 min Kh. No.120/2, 123/2 measuring 2-9 bigha situated at village Tikkari.
3.	34-N/4 of 1991	Joginder Singh s/o Pania R/o vill. Tikkari.	Kh/Kh No.4/7 min, Kh.82/1, measuring 0-2 biswa, situated in vill. Tikri.
4.	36-N/4 of 1991	Smt.Janak Dulari W/o Daulat Ram, R/o vill. Balera, Tikkari	Kh/Kh No.8/11 min, Kh.No. 21/2, measuring 1-14 bigha, situated in vill. Balera Tikkari.
5.	37-N/4 of 1991	1. Dhingia 2. Saina Devi 3. Sundri r/o village Balera Tikkari.	Kh/Kh No.10/13 min, Kh.No. 8/1, 28/3, 187/39/2, 110/1, 111/1, 124/2 measuring 5-5 bighas situated in vill. Balera Tikkari.
6.	38-N/4 of 1991	Shri Mehandoo s/o Sh. Chuhra, R/o village Tikkari.	Kh/Kh No.16/19 min, Kh. No.114/2, 114/3, measuring 1-1 bigha, situated in village Balera Tikkari
7.	39-N/4 of 1991	Sant Ram s/o Sh. Dhingia R/o village Tikkari.	Kh / Kh No.10/13 min, Kh. No.8/1, 28/3, 187/39/2, 110/1, 111/1, 124/2 measuring 5-5 bighas situated in village Balrea Tikkari.
8.	40-N/4 of 1991	1. Prithvi Chand 2. Udhham Singh R/o village Tikkari	Kh/Kh. No.5/8 min, Kh. No.11/2, 66/1, 193/131/2/2, measuring 1-12 bighas situated in vill.Balera Tikri.
9.	41-N/4 of 1991.	Laxmi Narain R/o vill. Tikri.	Kh / Kh No.9/12 min, Kh. No.118/2, 129/1, 130/2

			measuring 1-12 bighas situated in village Tikri.
10.	42-N/4 of 1991.	Ashok Kumar s/o Laxmi Narain R/o Village Tikri.	Kh / Kh No.4/7 min, Kh. No.83/1, measuring 0-2 bighas situated in village Tikri.
11.	43-N/4 of 1991	1. Smt.Kunta Devi, 2. Jabbar Singh 3. Mehandoo r/o vill. Tikri.	Kh / Kh No.17/20 min, Kh. No.63/1, 175/113/2/2, 177/ 116/1/2, 191/83/2/3 measuring 2-7 bighas situated in village Balera Tikri
12.	44-N/4 of 1991	Kunta Devi R/o vill. Tikri.	Kh / Kh No.4/7 min, Kh. No.180/12/2, 80/1, 164/2, 165/2, 65/1, 174/64/1 measuring 4-4 bighas situated in village Balera Tikri

6. I have heard the learned counsel for the parties and gone through the record.

7. The learned Advocate General has submitted that the learned Additional District Judge has erred in assessing the market value of the land with or without fruit trees wrongly. The assessment made by the Court below is not in accordance with the Act. The sale deed Ext.PW-1/D dated 20.3.1991 has been wrongly relied for assessing the market value. The notification under Section 4 was published in the Gazette on 23.12.1989 whereas sale deed Ext.PW-1/D is dated 20.3.1991. He has also submitted that the interest at the rate of 9% and 15% per annum has been wrongly awarded from the date of possession in the year 1972 instead of from the date of notification under Section 4 of the Act. The learned counsel for the petitioners have stated at Bar that they have no objection if market

value of the land along with trees is assessed by this Court as one unit. They have submitted that the claimants / petitioners are entitled to interest on solatium and other statutory amounts under the Act.

8. The learned Additional District Judge has assessed the market value of the land (i) without fruit trees and (ii) with fruit trees. PW-1 Jabbar Singh has placed on record Ext.PW-1/A to Ext.PW-1/D, copies of the sale deeds. PW1-A Amrit Lal is the vendee of sale deed Ext.PW-1/D dated 20.3.1991. He has stated that he had paid the market value of the land prevalent at the time of purchasing the land covered by sale deed by Ext.PW-1/D. PW2-A Bal Krishan is the vendor of sale deed Ext.PW-1/D vide which he sold four Biswas of land for a consideration of Rs.20,000/- which was the market value of sold land at that time. PW3-A Vidhya Dutt is the vendee of sale deed Ext.PW-1/B vide which he purchased two Biswas of land for a consideration of Rs.4000/- from Smt.Janak Dulari. He has stated that because of relationship he purchased the land at concessional rate. PW-4 Suresh Kumar is the power of attorney holder of Ashok Kumar. According to him, his brother Ashok Kumar vide Ext.PW-1/C had purchased two Biswas of land from Smt.Kunta Devi for a consideration of Rs.3900/-, which was the market value of that land at that time. As per sale deed dated 15.2.1988 Ext.PW-1/A Mohan Singh sold seven Biswas of land for a consideration of Rs.9000/- to Smt.Rashim Heer. The sale deeds Ext.PW-2/B and Ext.PW-2/C are of the same village where the land was acquired.

9. Bal Krishan vide sale deed Ext.PW-1/D dated 20.3.1991 had sold four Biswas land for a consideration of Rs.20,000/- to Amrit Lal. This sale deed has been believed by learned Additional District Judge for assessing the market value of the acquired land but actually even this sale deed has also not been relied by learned Additional District Judge for assessing the market value of the acquired land. As per sale deed Ext.PW-1/D the market value comes Rs.1 lac per Bigha whereas learned Court below has assessed the market value at Rs.11,000/- per Bigha of land without fruit trees and Rs.16,000/- per Bigha with fruit trees.

10. Hira Singh, Patwari, Patwar Circle, Ranaghat, has appeared as RW-7. He has deposed that one Hira Singh resident of Kumhali had sold nine Biswas land to Inder Singh for a consideration of Rs.85/- only and has produced *Rapat Roznamcha wakiyati RW-7/A.* He has produced certificates with respect to average sale price of five years Ext.RW-7/B and Ext.RW-7/C which were prepared on the basis of land revenue. He has also produced copies of sale deeds Ext. RW-7/F and Ext.RW-7/G.

11. RW-6 Jagmeet Singh, Patwari Halqua, Bhatal Bakhog, Tehsil Rajgarh has placed on record copies of sale deeds Ext.R-34, R-35, R-36, R-37, R-38 and R-39. The respondents have not examined any vendor or vendee of the sale deeds relied by them. They have also not placed any evidence on record to show that the lands covered by sale deeds Ext.R-34 to Ext.R-39 produced by them

are comparable with the acquired land. No doubt, certified copies of the sale deeds can be taken into consideration under Section 51-A of the Act for assessing the market value of the land but there is no material on record that the lands covered by sale deeds relied by respondents had same potentiality as of the acquired land. Therefore, the sale deeds Ext.R-34 to Ext.R-39 produced by the respondents cannot be relied.

12. Now only four sale deeds are left i.e. Ext.PW-1/A, Ext.PW-1/B, Ext.PW-1/C and Ext.PW-1/D. There is no evidence on record that land covered by sale deed Ext.PW-1/A had same potentiality as the acquired land. Therefore, this sale deed cannot be relied for assessing the market value of the acquired land. The sale deed Ext.PW-1/D is dated 19.3.1991 and the notification under Section 4 of the Act was published in the official Gazette on 27.5.1989. The sale deed Ext.PW-1/D was executed nearly one year 10 months after the notification under Section 4. The prices in the area were bound to increase after notification under Section 4 of the Act. In these circumstances, the sale deed Ext.PW-1/D also cannot be relied for assessing the market value of the land.

13. Now, only sale deeds Ext.PW-1/B and Ext.PW-1/C are left. The sale deed Ext.PW-1/B is dated 30.8.1988 and vide this sale deed two Biswas of land was sold for a consideration of Rs.4000/- and vide sale deed Ext.PW-1/C dated 30.8.1988 two Biswas of land was sold for Rs.3900/-. The learned Additional District Judge has

rejected sale deeds Ext.PW-1/B and Ext.PW-1/C by taking the view that possibility cannot be ruled out that these sale deeds were executed in order to inflate the market value of the acquired land at the instance of Jabbar Singh, Patwari, who was posted in the Land Acquisition Office and he was aware of the acquisition of the land. The vendors and vendees of sale deed Ext.PW-1/B and power of attorney holder of vendee of sale deed Ext.PW-1/C have been examined. There is no evidence on record that in fact Jabbar Singh was instrumental for recording inflated sale considerations in sale deeds Ext.PW-1/B and Ext.PW-1/C and the sale consideration mentioned in these sale deeds in fact did not exchange hands. There is nothing on record that sale deeds Ext.PW-1/B and Ext.PW-1/C are not genuine. The learned Additional District Judge has erred in rejecting sale deeds Ext.PW-1/B and Ext.PW-1/C for assessing the market value of the acquired land.

14. The vendors and vendees of sale deed Ext.PW-1/B and power of attorney holder of vendee of sale deed Ext.PW-1/C have appeared in the witness box. They have proved these sale deeds which are of same village where the land was acquired. As per these sale deeds average sale price comes to Rs.1975/- per Biswa or Rs.39,500/- per Bigha and this rate can be safely taken as market value of the acquired land with trees at the time of notification under Section 4 of the Act.

15. The land covered by sale deeds Ext.PW-1/B and Ext.PW-1/C are of small area, in some of the land references the area of acquired land is more than the land covered in sale deeds Ext.PW-1/B and Ext.PW-1/C. In view of the fact that land covered by sale deeds Ext.PW-1/B and Ext.PW-1/C are of small area, therefore, appropriate deduction is to be made for assessing the value of the land in question so that uniform rate is applied for the whole of the acquired land in all cases. As noticed above, the average sale price of sale deeds Ext.PW-1/B and Ext.PW-1/C comes to Rs.1975 per Biswa or Rs.39,500/- per Bigha. Therefore, after allowing suitable deduction, in my opinion, Rs.32,000/- per Bigha is the appropriate market value of the land in question with trees in all the appeals at the time of the notification under Section 4 of the Act i.e. on 27.5.1989. The acquisition was for road, therefore, in my opinion, the petitioners are entitled to market value of acquired land at flat rate of Rs.32,000/- per Bigha irrespective of the classification of the land. In addition to above, the petitioners are entitled to 12% increase under Section 23(1-A) from the date of notification under Section 4 of the Act i.e. 27.5.1989 to the date of award of Collector i.e. 30.3.1991. The petitioners are also entitled to 30% compulsory acquisition charges under Section 23(2), 9% interest per annum from 27.5.1989 to 27.5.1990 and thereafter at the rate of 15% interest per annum on enhanced compensation till the date of payment to the petitioners or deposit in the Court.

16. The result of above discussion is that RFA No.222 of 1998 with RFAs No.220, 223, 224, 225, 226, 227, 228, 231, 232 of 1998 & RFA No.45 of 2000 along with cross objections No.62/99 in RFA No.220/98, C.O. No.57/99 in RFA No.223/98, C.O. No.58/99 in RFA No.224/98, C.O. No.60/99 in RFA No.225/98, C.O. No.32/99 in RFA No.226/98, C.O. No.59/99 in RFA No.227/98, C.O. No.127/99 in RFA No.228/98, C.O. No.31/99 in RFA No.231/98 and C.O. No.61/99 in RFA No.232/98 are partly allowed and the impugned award is modified. The market value of the acquired land with trees is assessed at Rs.32,000/- per bigha. In addition to this, the petitioners are entitled to 12% increase under Section 23(1-A) from the date of notification under Section 4 of the Act i.e. 27.5.1989 to the date of award of Collector i.e. 30.3.1991, 30% compulsory acquisition charges under Section 23(2), 9% interest per annum from 27.5.1989 to 27.5.1990 and thereafter at the rate of 15% interest per annum on enhanced compensation till the date of payment to the petitioners or deposit in the Court. No costs.

July 18, 2007 *(soni)*

(Kuldip Singh)
Judge.

1.	***RFA No.222 of 1998*:**		
	LAC & Ors.	**Versus**	**Joginder *Singh***
2.	***RFA No.220 o f 1998*:**		
	LAC & Ors.	**Versus**	**Dhingia & Ors.**
3.	***RFA No.223 of 1998:***		
	LAC & Ors.	**Versus**	**Kunta Devi *& Ors*.**
4.	***RFA No.224 of 1998*:**		
	LAC & Ors.	**Versus**	**Sant *Ram & Anr.***
5.	***RFA No.225 of 1998*:**		
	LAC & Ors.	**Versus**	**Kunta**
6.	***RFA No.226 of 1998:***		
	LAC & Ors.	**Versus**	**Laxmi Narain**
7.	**RFA No.227 of 1998:**		
	LAC & Ors.	**Versus**	**Mahandoo**
8.	**RFA No.228 of 1998:**		
	LAC & Ors.	**Versus**	**Prithvi Chand & Anr.**
9.	**RFA No.231 of 1998:**		
	LAC & Ors.	**Versus**	**Janak Dulari Suri**
10.	**RFA No.232 of 1998:**		
	LAC & Ors.	**Versus**	**Narain Singh & Ors.**
11.	**RFA No.45 of 2000:**		
	Thagro & Ors.	**Versus**	**LAC & Ors.**

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